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Supreme Court of the United States

OCTOBER TERM, 1946

No. 1329

TODD SHIPYARD CORPORATION, successor by merger to ROBINS DRY DOCK & REPAIR COMPANY,

Petitioner,
(Respondent-Impleaded-Appellee),

—against—

GRACE PULEO, as Administratrix of the Estate of PETER PULEO, Deceased,

Respondent,
(Libellant-Appellee),

—and—

H. E. MOSS & COMPANY, owner of the S. S. LUCELLUM,

Respondent,
(Respondent-Appellant).

BRIEF OF GRACE PULEO, AS ADMINISTRATRIX OF THE ESTATE OF PETER PULEO, DECEASED, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JACOB RASSNER,
Counsel for Grace Puleo, as Administratrix of the Estate of Peter Puleo, Deceased, Respondent.

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The Facts

The facts as set forth in the majority opinion below, R. 269-275, *Cf.* R. 272, by Judge Learned Hand, and the facts set forth by petitioner in its brief, page 5, are somewhat different.

Argument

The petitioner has failed to comply with Revised Rules 12, paragraphs 1 and 38, paragraph 2 of the Supreme Court of the United States and has failed to show its contention upon which authority it bases this Court's jurisdiction to review the decision below.

There is no question involved in this matter which would warrant a review by the Supreme Court of the United States.

The substance of petitioner's contention is that contracts of indemnity have been interpreted differently by the Federal Courts than by the State Courts.

This is the very question which was urged as the basis of the petition for a writ of certiorari in the matter of *American Stevedores, Inc.*, Petitioner, v. *Rosario Porello & United States of America*, Respondents, October Term, 1946, No. 996, in which the petition was granted. 328 U. S. 827, 66 S. Ct. 1013.

This Court reviewed the question in the *Porello* case, 67 S. Ct. 847, and determined that a contract of indemnity between a shipowner and a ship repair yard is one which raises questions of fact and should be determined by the Courts of original jurisdiction on the intent of the parties.

Such contract is not limited or restricted by law so as to give any special benefits to one against the other. It is solely the intent of the parties that govern.

See:

American Stevedores, Inc. v. *Porello, et ano., supra.*

There is no question in the case other than factual controversies, which have already been fully determined.

A disputed question of fact decided by an Admiralty Court is not a subject for review by the United States Supreme Court.

The law is well settled as stated in the case of *Campana Corp.* v. *Harrison*, 114 Fed. (2) 400, on page 405:

> "The reviewing Court does not review the evidence as an original fact finding tribunal; it does not attempt to settle conflicts in evidence or to determine questions of credibility."

McDonald v. *Pless*, 238 U. S. 264;
Hyde v. *U. S.*, 225 U. S. 347;
Mattox v. *U. S.*, 146 U. S. 140;
8 Wigmore, Evidence (3rd Ed. 1940) 668-677, 282 ff.;
Sunderland, Verdicts General and Special, 29 Yale L. J. 253 (1919).

See also:

Letter from Chief Justice Hughes to Senator Wheeler, Senate Report No. 711, 75th Cong., 1st Sess. 38, 39 (June 14, 1937), wherein the late Chief Justice Hughes stated:

> "Unmeritorious appeals cause intolerable delays. Such appeals clog the calendar and get in the way of those that have merit."

The late Chief Justice Hughes further stated in substance, that where the parties have been fully heard in the Courts below, they have no right to burden the Supreme Court with disputes which interest no one but themselves.

This Court has disposed of all legal effect to be given to a contract of indemnity such as is involved in the case at bar (*American Stevedores, Inc.* v. *Porello, supra*), and

nothing remains but an issue of fact already determined by a full review of the evidence in the District Court and then again by the Circuit Court of Appeals for the Second Circuit, which had the authority to review the facts *de novo*.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

JACOB RASSNER,
Counsel for Grace Puleo, as Administratrix of the Estate of Peter Puleo, Deceased, Respondent.